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Ostrow Kaufman & Frankl LLP Susan Formicola The Chrysler Building 405 Lexington Avenue, 62nd Floor NEW YORK, NY 10174			CHORNESKY, ADAM B	
ART UNIT		PAPER NUMBER		
3688				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/662,776	<b>Applicant(s)</b> RIEDL ET AL.
	<b>Examiner</b> ADAM CHORNESKY	<b>Art Unit</b> 3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 04 September 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-12,14-20,23-41,43-50,52 and 53 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12, 14-20, 23-41, 43-50, 52 and 53 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. The following is a Final Office action in response to the Amendment filed on September 04, 2009. The Amendment cancelled Claims 13, 21, 22, 42 and 51; amended Claims 1, 14, 24, 34, 43, 45, 49, and 50; and withdrew claims 54-109.. Thus the currently pending claims considered below are Claims 1-12, 14-20, 23-41, 43-50, 52 and 53.

*Claim Rejections - 35 USC § 112*

2. Claims 1-12, 14-23 and 49 were previously cited under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Claims 21 and 22 have been cancelled and independent claims 1 and 49 have been amended as follows: (claim 1, lines 3-4) "... select one or more advertisements according to address data associated with the client ..." and (claim 49, lines 17-18) "... calculating, by using a programmable microprocessor ..." In view of this amendment, the Examiner hereby withdraws the prior rejection for claim 1. Further, the Examiner has reviewed the prior rejection under 35 U.S.C. §112, first paragraph for claim 49 in light of the amendments and withdraws that rejection.

3. Claims 1-12, 14-23 and 34-44 were previously rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Independent claim 1, lines 3-4 has been amended to recite "... to select one or more advertisements according to address data associated with the client ..." The preamble of independent claim 49 has been amended to recite "A computerized method

for delivering local advertising ...", and several elements now recite "electronically receiving ...", and "electronically creating ..." Also, independent claim 49, line 17 has been amended to recite "calculating, by using a programmable microprocessor, ..." Independent Claim 45 was previously cited under 35 U.S.C. §112, second paragraph as having insufficient antecedent basis by reciting "The method" in line 1. The claim has been amended to recite "A computerized method". Independent claim 24, line 5 has been amended to recite "generating a playlist utilizing a geographically zoned local advertisement ..." Independent claim 34, lines 6-7 have been amended to recite "... generate a playlist utilizing one or more geographically zoned local advertisements ..." In view of these amendments, the Examiner hereby withdraws these prior rejections to independent claims 1, 24, 34, 45 and 49. However, the Examiner retains the following rejections to claims 1 and 43.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-12, 14-23 and 34-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In independent claim1 (line 7), "time shifted program" is indefinite because it lacks a "clear definition" (pars. 9 and 10 below). Similarly, in independent claim 43, line 5, "properly zoned" is indefinite.

7. Note on interpretation of claim terms - Unless a term is given a "clear definition" in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest

reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” (MPEP § 2111.01.III). A “clear definition” must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as “by xxx we mean”; “xxx is defined as”; or “xxx includes, … but does not include …”. An example does not constitute a “clear definition” beyond the scope of the example.

8. The instant application contains no such clear definition for the phrase “any of the phrases rejected above”. Some, included “time-shifted program”, are defined by example, but, as noted above, an example does not constitute the legally required “clear definition”.

*Claim Rejections - 35 USC § 101*

9. Independent method claims 43, 45, 49 and 50 have been amended to include a computerized method and the steps of: “electronically receiving multiple zoned copies ...”, “electronically determining, by using a programmable microprocessor ...”, “determining, by using a programmable microprocessor ...”, “calculating, by using a programmable microprocessor ...”, “modifying, by using a programmable microprocessor ...”, etc. in at least one significant element of the corresponding claims. Therefore, under the new rules governing the 35 U.S.C. §101 prosecution under Bilski, the Examiner hereby withdraws the prior rejection for claims 43, 45, 49, and 50 and their dependent claims 44, 46-48, 52 and 53.

*Claim Rejections - 35 USC § 102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 24-31, 45-50, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Elderling et al. (US PgPub 20020123928 A1).

Claim 24: Elderling discloses a method for delivering local advertising to a client in a video distribution system, the method comprising:

performing an action that invokes a request for a program (paragraph [0090] via TV transactions are not limited to broadcast and cable television but may include pay per view (PPV), video on demand (VOD), near VOD (NVOD), or other video that may be delivered over a television access network);

collecting information regarding the request (paragraph [0090] via the viewing characteristics database 610 may receive data from a TV viewing characteristics database 612 and an Internet viewing characteristics database 614);

generating a playlist utilizing a correctly geographically zoned local advertisement and the requested program (paragraph [0156] via the querying of a database to obtain information about a target group using the correlation of an ad characteristic with a particular group identified by zip code, area code, town, cable node. Group IDs may be utilized to determine applicability of an ad to a particular group, with the basis for the grouping being geographic, demographic, socioeconomic, or through another grouping mechanism; and paragraph [0061] and figure 31 via an exemplary mapping of subscriber to elements of the cable television (CTV) system; and paragraph [0084] via numerous characteristics by which subscribers can be grouped,

including but not limited to geographic, demographic, psychological, psychographic, socio-cultural, viewing habits, purchase habits, Internet surfing habits, interests and hobbies; and paragraph [0091] via each subscriber will not be identified by personal information, such as name, but instead will be identified by some unique identification, which may include but is not limited to customer number, media access control (MAC) ID, and Internet protocol (IP) address; paragraph [0159] and figures 30 and 31 via the subscribers 3030 may be grouped by head-end (subzone) 3010, node (microzone) 3020 or branch 3040; regardless of how the subscribers 3030 are grouped it is necessary for there to be a correlation between each subscriber 3030, their respective profile, and each head-end 3010, node 3020 or branch 3040 respectively; FIG. 31 illustrates an exemplary table correlating subscribers S1-S4 of FIG. 30, with their MAC-ID; paragraphs [0158]-[0160] and figures 30 and 31 via a typical cable television (CTV) hierarchy consisting of a zone or super head-end 3000 that receives national programming and distributes the national programming to a plurality of head-ends 3010; each HE 3010 serves an umber of nodes 2030; each node servers a plurality of subscribers 3030; the subscribers 3030 may be grouped by head-end (subzone) 3010, node (microzone) 3020 or branch 3040 and it is necessary for there to be a correlation between each subscriber 3030, their respective profile, and each head-end 3010, node 3020 or branch 3040; Fig. 31 illustrates an exemplary table correlating subscribers S1-S4 of FIG. 30, with their MAC-ID, a profile, and the subzone (head-end) 3000, node (microzone) 3020, and branch 3040 that are connected to within the CTV system [the Examiner construes the zones, microzones, nodes, MAC addresses of Eldering as also mapping to geographical location, since these forms of addressing can also be traced back to geographical location through a database lookup table]; and

determining whether the geographically zoned local advertisement has expired and replacing an expired geographically zoned local advertisement with a replacement advertisement (paragraph [0122] and figures 18-20 via based on the type of programs viewed, times watched, channel change patterns, volume levels or other subscriber activities the heuristic rules could define the probability of a subscriber eating fast food, the type of ads they are receptive to (i.e., emotional, funny, abrasive), or the probability of the subscriber paying for a particular service (i.e., car or house cleaning, oil change) as opposed to doing it themselves [the Examiner construes the term "times watched" to include time of day/night intervals as well as how frequently a particular program is watched in order to determine when to place a particular advertisement]; and paragraph [0184] via in addition to the ads it is likely that an ad queue defining some characteristics of when ads should displayed is also sent to the PVR and stored thereon; based on the ad queues the ads would be substituted during avails [the Examiner construes the recitation of "... an ad queue defining sum characteristics of when ads should be displayed ..." as a determination of when to place a particular ad]; paragraph [0086] and figure 5 via a secure correlation server creates presentation streams that have the same programming but include targeted advertisements in place of the default advertisement [the Examiner construes the action of the secure correlation server as the expiring of the default advertisement in favor of the selected targeted advertisement]); and

delivering the local advertising and program to a client for decoding and playback (paragraph [0161] via ads may be targeted to the subscribers within the subzone based on the subzone profile).

Claim 25: Eldering discloses all the elements of Claim 24 and further discloses wherein collecting information comprises collecting client information (abstract via monitoring subscriber viewing interactions, such as television viewing interactions, and generating viewing characteristics therefrom).

Claim 26: Eldering discloses all the elements of Claim 25, and further discloses wherein collecting information comprises collecting program information (paragraphs [0093] and [0094] and figure 7 via information related to the source material 720, such as ... program data 726 ...).

Claim 27: Eldering discloses all the elements of Claim 24, and further discloses wherein the client performs an action that invokes the request (paragraph [0090] and figures 5 and 6 via a TV viewing characteristics database 612 and an Internet viewing characteristics database 614 where each of these databases may receive transaction data from a TV transaction database 616 and an Internet transaction database 618 respectively).

Claim 28: Eldering discloses all the elements of Claim 24, and further discloses the invention comprising recording one copy of a given program for each local advertising zone that the video distribution system services (paragraph [0085] and figure 5 via an exemplary system for grouping TV subscribers into subgroups and delivering targeted ads consisting of content providers 510, national advertisers 520, local advertisers 530, a Secure Correlation Server.TM. (SCS) 540, a Secure Profiling System (SPS) 550, a network operator, an access network and subscribers 580; where the national advertiser 520 delivers national ads 522 to the content

providers 510 and the content providers 510 generate and deliver program streams 515, and then delivered to the SCS 540; the SCS 540 also receives additional national ads 524 and local ads 526 from the national advertiser 520, and local ads 535 from the local advertisers 530. The SCS 540 also receives subscriber profiles 555 from the SPS 550).

Claim 29: Eldering discloses all the elements of Claim 28, and further discloses the invention comprising segmenting local advertising out of each program copy and marking each segmented program copy with a zone identifier (paragraph [0078] via subscribers are divided into subgroups, and different ads are targeted to each subgroup).

Claim 30: Eldering discloses all the elements of Claim 29, and further discloses wherein collecting information comprises collecting a zone identifier for the zone from which the request originates (paragraphs [0110]-[0112] and figure 6 via the purchasing characteristics database 620 may receive input from a variety of sources including, but not limited to, point of sale purchase characteristics 622, Internet purchase characteristics 624, phone purchase characteristics 626, and mail order purchase characteristics 628; and transaction characteristics database 630 may receive input related to a variety of transaction characteristics including but not limited to credit card transaction characteristics 632, phone transaction characteristics 634, banking transaction characteristics 636 and location transaction characteristics 638).

Claim 31: Eldering discloses all the elements of Claim 29, and further discloses wherein the segmenting is performed by identifying indicators for local advertising (paragraph [0085] and

figure 5 via grouping TV subscribers into subgroups and delivering targeted ads, and the SCS 540 determines which ads (additional national ads 524, local ads 526, 535) should be substituted (targeted) for the ad (default ad) within the program stream 515 and which subscribers 580 should receive which ads).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-12, 14, 15, 17-20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hooks et al. (US Pat 6169542 B1) in view of Eldering et al. (US PgPub 20020123928 A1).

Claim 1: Hooks discloses a system for creating a program for delivery to a client in a video time shifting architecture, the system comprising:

an advertisement selection system (ADS) operative to select one or more advertisements according to address data associated with the client and transmit one or more identifiers that uniquely identify the selected advertisements (col. 4, lines 9-11 via editing facility 28 generates advertisements or receives pre-recorded advertisements which are inserted into the original program; and col. 2, lines 51-63 and figures 5 and 8 via editing facility 28 generates

advertisements or receives pre-recorded advertisements which are inserted into the original program);

but Hooks only discloses in part wherein advertisements are selected according to address data associated with the client (col. 7, line 59 through col. 8, line 7 and Fig. 4 via a block diagram of the components of one of the interactive video subscriber units 22 at a subscriber location ... the subscriber provides the user input at set-top box 94 through key-presses at subscriber interface 96; the key-presses are detected at set-top box 94 and sent to head end facility 54; and col. 12, lines 35-43 via when entry 154 is received, program control proceeds to a task 170; task 170 causes processor 74 to forward a purchase order through modem bank 82 (FIG. 1), and PSTN 84 (FIG. 1), to commercial enterprise 86 (FIG. 1); the purchase order may be in the form of an electronic mail (e-mail) message to commercial enterprise 86 containing information regarding the subscriber, such as mailing address, telephone number, charge card number, and so forth; and col. 14, lines 28-45 via the interactive programming techniques allow a subscriber to selectively obtain supplementary advertising information related to a viewed advertisement in the form of links to data stored in memory at the head end facility, hyperlinks to the Internet, and purchase option capability; moreover, the supplementary advertising information is received through a subscriber's television, eliminating the need for remembering or writing down telephone numbers and addresses in order to call, send a letter, or access a separate computer system to obtain supplementary advertising information.).

Eldering teaches in paragraph [0061] and figure 31 an exemplary mapping of subscriber to elements of the cable television (CTV) system. Eldering also teaches in paragraph [0084] numerous characteristics by which subscribers can be grouped, including but not limited to

geographic, demographic, psychological, psychographic, socio-cultural, viewing habits, purchase habits, Internet surfing habits, interests and hobbies. In paragraph [0091], Eldering teaches that each subscriber will not be identified by personal information, such as name, but instead will be identified by some unique identification, which may include but it not limited to customer number, media access control (MAC) ID, and Internet protocol (IP) address. Eldering further teaches in paragraph [0159] and figures 30 and 31 that the subscribers 3030 may be grouped by head-end (subzone) 3010, node (microzone) 3020 or branch 3040. Regardless of how the subscribers 3030 are grouped it is necessary for there to be a correlation between each subscriber 3030, their respective profile, and each head-end 3010, node 3020 or branch 3040 respectively.

FIG. 31 illustrates an exemplary table correlating subscribers S1-S4 of FIG. 30, with their MAC-ID.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the graphical hot links of Hooks to include the mapping of subscribers to elements of the CTV system, geographic grouping, internet protocol addresses, zone identification, etc. of Eldering in order to group subscribers together based on various criteria including, but not limited to geographic proximity, nodes, microzones, etc. (paragraph [0023]).

Hooks further discloses an advertisement management system (AMS) operative to generate a playlist that identifies content, including a user requested time shifted program and the one or more selected advertisements, the AMS being further operative to request one or more replacement advertisements for the one or more selected advertisements wherein the one or more selected advertisements have expired (col. 2, lines 37-63 and Fig. 1 via transmitting an

advertisement to an interactive video subscriber unit in connection with an interactive video program and receiving, at the head end facility over a return path, a request to register the advertisement in a menu ... generating an entry for the advertisement in the menu, communicating to the subscriber unit, the menu in a video still image, and obtaining, at the head end facility over the return path, a selection request for the entry [the Examiner construes relevant components of the head-end facility 58, e.g. the processor 74, web browser 90, menu database 79, modem bank 82, PSTN 84, etc. to be the AMS (advertising management system), and the replacement process to consist of subscribers adding and removing menu items from the menu database];

Elderling teaches in paragraph [0086] and figure 5 that the Secure Correlation Server (SCS 540) creates presentation streams 545 that have the same programming but targeted ads in place of the default ad.

Therefore, from the teaching of Elderling it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Elderling in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (paragraph [0024]); and

a video server operative to interpret the playlist and deliver the content to the user (col. 7, lines 5-15 and figure 1 via video server 60 multiplexes these two inputs with

other optional video inputs, typically through modulation into different frequency bands, and outputs a broadband signal to video distribution medium 56).

Claim 2: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further disclose wherein the AMS generates a playlist that identifies a given one of the one or more selected advertisements as a bumper advertisements for delivery by the video server prior to the user requested program (col. 7, lines 16-22 and figures 1 and 2 via audio-to-data decoder 72 recognizes the audio tones recorded on synchronization channel 44 and generates the corresponding ASCII data codes 38 and couples to processor 74).

Claim 3: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the AMS generates a playlist that identifies a given one of the one or more selected advertisements as a pause teaser advertisement for delivery by the video server upon receipt of a pause control command (col. 5, lines 51-57 and figures 1, 2 and 3 via when medium 30 is played from its beginning, program-specific data 50 are read and stored in a head end facility processor before full-motion program 36 begins).

Claim 4: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the AMS generates a playlist that identifies a given one of the one or more selected advertisements as a pause advertisement for delivery by the video server upon the receipt of a pause advertisement control command (col. 8, lines 62-63 and figure 4 via a logo 108 identifies first advertisement 40 as an interactive advertisement).

Claim 5: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the playlist is indexed according to Normal Play Time (NPT) (applicant defines normal play time in specification pg. 8, lines 7-18 as markers to delimit content within the playlist as per col. 4, lines 54-65 and figures 2 and 3 of Hooks via coordination between a full-motion program 36 recorded on recording medium 30 and exemplary ASCII data codes 38 also recorded on recording medium 30 to mark where advertisements are inserted at predetermined time periods).

Claim 6: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the video server is operative to receive a pause control command from a client, mark the location in the playlist that corresponds to a point in time when the video server receives the pause command and advance to an advertisement in the playlist (col. 11, lines 8-17 and figures 6 and 8 via advertisement identifiers for a number of advertisements that were registered in menu database 79).

Claim 7: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the client displays a pause video still overlay upon transmission of a pause control command (col. 9, lines 5-8 and figure 4 via the subscriber creates a registration request, for example, by pressing a color coded key on subscriber interface 96 or by pressing another designated key or keys on subscriber interface 96).

Claim 8: Hooks and Eldering disclose all the elements of Claim 7 and Hooks further discloses wherein the pause video still overlay comprises operating instructions (col. 11, lines 53-65 and figure 9 via interactive menu 150 includes an intrasystem link (MORE INFO) entry 152, a purchase option (PLACE ORDER) entry 154, a hyperlink (VISIT WEB SITE) entry 156, a delete advertisement from menu entry 158, and a return to advertisement menu entry 160).

Claim 9: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the video server advances to a pause teaser advertisement in the playlist and begins delivery of the pause teaser advertisement (col. 10, lines 57-63 and figures 1, 4 and 7 via the video still image is then communicated from video server 60 through video distribution medium 56 to set-top box 94).

Claim 10: Hooks and Eldering disclose all the elements of Claim 9 and Hooks further discloses the invention comprising delivering the pause teaser advertisement to the client for display (col. 10, lines 57-63 and figures 1, 4 and 7 via the video still image is then communicated from video server 60 through video distribution medium 56 to set-top box 94).

Claims 11 and 12: Hooks and Eldering disclose all the elements of Claim 6 and Hooks further discloses wherein the video server returns to the location in the playlist that corresponds to a point in time when the video server receives the pause command and commences delivery of the user requested program; and begins delivery of a pause advertisement in response to receipt of a pause advertisement control command. (col. 11, lines 8-17 and figures 6 and 8 via

advertisement identifiers for a number of advertisements that were registered in menu database 79).

Claim 14: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses in part wherein the targeting algorithm operates the ADS selects the one or more selected advertisements on the basis of aggregate viewing information (col. 4, lines 9-12 via a head end facility configured to transmit an advertisement in connection with an interactive video program and receive a request from one of the subscriber units to register the advertisement in a menu [the Examiner construes this description as an exemplary single instance over a cable television network and that this event occurs via multiple instances, hereby construed as the selection of the “one or more selected advertisements”]).

Claim 15: Hooks and Eldering disclose all the elements of Claim 14 and Hooks further discloses wherein the ADS comprises a connection to an external targeting system (col. 12, lines 59-65 and figures 1 and 7 via task 174 causes processor 74 to invoke web browser 90 from memory 78 to access a first web site 176 related to commercial enterprise 86).

Claim 17: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the ADS transmits advertisements and advertisement metadata to the AMS for storage in a content storage device (col. 3, lines 63-67 through col. 4, lines 1-8 and figure 1 via the editing facility 28 [where the Examiner construes the editing facility 28 and associated elements as the ADS or advertisement selection system of the current invention] produces

programs on recordable media such as video cassette recorder (VCR) tape for use on the VCRs at the head end unit 54).

Claim 18: Hooks and Eldering disclose all the elements of Claim 17, and Eldering further discloses wherein the AMS transmits an acknowledgement to the ADS upon receipt of the advertisement and advertisement metadata.

Eldering teaches in paragraph [0085] and figure 5 an exemplary system for grouping TV subscribers into subgroups and delivering targeted ads thereto. The program stream is delivered to the Secure Correlation Server (SCS 540) [construed by the Examiner as the ADS or ad selection system, since it selects ads for insertion into programming avails, programming consisting of recorded and live television shows, movies, etc.]. The SCS 540 also receives additional national ads 524 and local ads 526 from the national advertiser 520, and local ads 535 from the local advertisers 530 [the Examiner construes this transmission of ads to the SCS 540 as part of the AMS or advertisement management system]. The SCS 540 also receives subscriber profiles 555 from the SPS 550. The SCS 540 is configured to correlate ads with subscribers, so that ad effectiveness is increased.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for

advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (paragraph [0024]).

Claim 19: Hooks and Eldering disclose all the elements of Claim 1 and Hooks further discloses wherein the video server receives control commands from the user (col. 9, lines 9-19 and figures 1, 4 and 5 via the registration request is forwarded through set-top box 94 over video distribution medium 56 and through video server 60 to an input 107 of processor 74).

Claim 20: Hooks and Eldering disclose all the elements of Claim 19 and Hooks further discloses wherein the video server requests a new playlist from the AMS upon the receipt of a new program initiation command from the user (col. 10, lines 57-63 and figures 1 and 7 via task 132 causes processor 74 to provide a video still image to the digital media server element of video server 60).

Claim 23: Hooks and Eldering disclose all the elements of Claim 20, and Eldering further discloses wherein the AMS transmits a request to the ADS to select one or more local advertisements included in the program as originally broadcast.

Eldering teaches in paragraph [0086] and figure 5 that the Secure Correlation Server (SCS 540) creates presentation streams 545 that have the same programming but targeted ads in place of the default ad. The presentation streams 545 are delivered to the network operator 560, who in turn delivers them to the subscribers 580. The network operator 560 may deliver each presentation stream 545 to each subscriber 580 and an indication of which ad is designated for

which subscriber 580 or may deliver only the appropriate presentation stream 545 to each subscriber 580.

Therefore, from the teaching of Eldering it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks to include the targeted advertisement insertion performed by the Secure Correlation Server of Eldering in order for subscribers to receive ads that are more likely applicable to their life style, allow content providers to charge advertisers a premium for delivering targeted ads, and save money for advertisers because they only pay to deliver the ads to subscribers that most likely are interested in the ad (paragraph [0024]).

14. Claims 34-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumley et al. (US Pat 6588013 B1) in view of Hooks et al. (US Pat 6169542 B1).

Claim 34: Lumley discloses a system for delivering local advertising to a client in a video distribution system, the system comprising:

a client device operative to perform an action that invokes a request for a program (abstract via an interactive electronic television program guide);

but Lumley only discloses in part an advertisement management system (AMS) operative to collection information regarding the request and generate a playlist utilizing a correctly one or more geographically zoned local advertisements and the requested program, the AMS being further operative to request one or more replacement advertisements for the one or more

geographically zoned advertisements wherein the one or more selected advertisements have expired (abstract via promotional material is selected for distribution according to a promotional material selection algorithm); and

Hooks teaches in col. 2, lines 37-63 and Fig. 1 transmitting an advertisement to an interactive video subscriber unit in connection with an interactive video program and receiving, at the head end facility over a return path, a request to register the advertisement in a menu ... generating an entry for the advertisement in the menu, communicating to the subscriber unit, the menu in a video still image, and obtaining, at the head end facility over the return path, a selection request for the entry [the Examiner construes relevant components of the head-end facility 58, e.g. the processor 74, web browser 90, menu database 79, modem bank 82, PSTN 84, etc. to be the AMS (advertising management system), and the replacement process to consist of subscribers adding and removing menu items from the menu database].

Therefore, from the teaching of Hooks it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the promotional material distribution system with automatic updating of promotional material selection algorithms of Lumley to include the method of delivering advertising through an interactive video distribution system of Hooks in order to provide a method and system for effectively delivering advertising to viewers; and

Lumley also discloses a video server operative to receive the playlist and deliver the local advertisement and program to the client for decoding and playback (col. 11, lines 31-36 via if desired, the interactive application may be implemented using a client-server architecture in which the primary processing power for the application is provided by a server located at, for

example, the television distribution facility or the main facility and user television equipment acts as a client processor).

Claim 35: Lumley and Hooks disclose all the elements of Claim 34, and Lumley further discloses wherein the AMS is operative to collect information regarding the requesting client (col. 6, lines 57-65 and Fig. 1 via television distribution facility 16 has promotional event recorder 44 for maintaining a promotional event log which is provided to main facility 12 over communications link 15).

Claim 36: Lumley and Hooks disclose all the elements of Claim 34, and Lumley further discloses wherein the AMS is operative to collect information regarding the requested program (col. 3, lines 20-40 via a promotional event log is maintained by the television distribution facility which may include entries for the time of day a promotional event was distributed or displayed, attributes of how the promotional event was performed, which script version was active at the time, the first choice of promotional event, the title of the promotional event, the actual file (e.g., text, graphic, audio or video) that was utilized in the promotional event, actual duration of the promotional event in milliseconds and frames, expected duration, display attributes, actual computed overlay (e.g., channel 16 at 4:00 P.M.), and any special play effect).

Claim 37: Lumley and Hooks disclose all the elements of Claim 34, and Lumley further discloses wherein the video server records one copy of a given program for each local advertising zone that the video distribution system services (col. 8, line 64 through col. 9, line 14

and Fig. 4 via promotional event log analyzer 30 may make changes to a promotional material selection algorithm if the algorithm does not provide for optimal promotional material selection, such as having certain promotional events in certain time slots for different time zones, having particular promotional events sent to television distribution facilities of a certain service configuration).

Claim 38: Lumley and Hooks disclose all the elements of Claim 37, and Lumley further discloses wherein the video server segments local advertising out of each program and marks the segmented local advertising with a zone identifier (col. 1, line 65 through col. 2, line 9 via global promotional videos are also generated by a main facility and stored on laserdisks and are provided to cable system headends via a suitable mail carrier in addition to the real-time stream of videos; the global promotional videos are displayed until a "local segment" occurs; during the "local segment" the headends select promotional videos from the laserdisks according to a promotional philosophy or playlist).

Claim 39: Lumley and Hooks disclose all the elements of Claim 38, and Lumley further discloses wherein the video server collects a zone identifier for the zone in which the client resides (col. 3, lines 41-61 via a promotional event log analyzer at the main facility is programmed to automatically determine if promotional material is being selected optimally based on the promotional event log, by way of a desirable occurrences database having a set of rules that may, for example include: having a large number of promotions of a particular theme during a particular time slot, having certain promotional events in certain time slots for different

time zones, having particular promotional events sent to television distribution facilities of a certain service configuration).

Claim 40: Lumley and Hooks disclose all the elements of Claim 37, and Lumley discloses wherein the video server segments the local advertising by identifying indicators for the local advertising (col. 1, line 65 through col. 2, line 9 via global promotion videos are displayed until a “local segment” occurs; and col. 6, lines 8-20 and Fig. 2 via an illustrative promotional material display screen 80 may be divided into video promotion area 82, text promotion area 84, and program listings area 86 or any combination thereof).

15. Claims 45-50, 52 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elderling et al. (US PgPub 20020123928 A1) in view of Cowan et al. (US Pat 6941573 B1).

Claim 45: Elderling discloses a computerized method for delivering local advertising to a client in a video distribution system, the method comprising:

electronically creating a playlist with an identifier identifiers for a given program and one or more national advertisements (paragraph [0092] and figure 7 via interaction with an electronic or interactive program guide (EPG) 718 and viewing characteristics vectors (VCPS 700) monitoring; and if the VCPS 700 was monitoring viewer interaction with a computer, interactive TV or other device connected to the Internet, the subscriber interactions may also include sites visited, click throughs, book marks and other commands applicable to Internet surfing);

determining, by using a programmable microprocessor, a geographical zone in which a requesting client resides (paragraph [0116] and figures 5 and 17B via demographic segment information can be used in the exemplary TV delivery environment by combining it with the network operator's billing database as shown in Fig. 17B);

but Eldering does not disclose associating one or more local advertisements with the given program wherein the one or more local advertisements include a zone identifier proximate to the geographical zone;

Cowan teaches in col. 4, lines 15-49 use of the consumer community at large as subjects of consumer analysis when normal and substitute programs are presented on the television receiver of a community. Normal and substitute signals are distributed to separate zones of the community. Particular stores are selected to represent a particular community, stores selected to be representative of the community. The stores selected are those in which the shoppers are preponderantly from the same zone. Such a selection may be made based, for example, on the demographic data provided by a sample of the consumers themselves and/or it may be made based on a fixed perimeter drawn around the stores. Once the stores, and their included consumer information collection systems are identified, data associating particular stores with particular zones is then recorded in the market research computer. When a test is performed in which substitute advertising is transmitted to particular zones, the consumer purchase data from the selected stores of the market study area is collected. The significance of the substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the interaction with an electronic or interactive program guide and viewing characteristics vectors monitoring of Elderling to include the associating of advertising with particular zones of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served (col. 2, lines 12-16).

Elderling further discloses determining whether the geographically zoned local advertisement has expired and replacing an expired geographically zoned local advertisement with a replacement advertisement (paragraph [0122] and figures 18-20 via based on the type of programs viewed, times watched, channel change patterns, volume levels or other subscriber activities the heuristic rules could define the probability of a subscriber eating fast food, the type of ads they are receptive to (i.e., emotional, funny, abrasive), or the probability of the subscriber paying for a particular service (i.e., car or house cleaning, oil change) as opposed to doing it themselves [the Examiner construes the term "times watched" to include time of day/night intervals as well as how frequently a particular program is watched in order to determine when to place a particular advertisement]; and paragraph [0184] via in addition to the ads it is likely that an ad queue defining some characteristics of when ads should displayed is also sent to the PVR and stored thereon; based on the ad queues the ads would be substituted during avails [the Examiner construes the recitation of "... an ad queue defining sum characteristics of when ads should be displayed ..." as a determination of when to place a particular ad]; paragraph [0086] and figure 5 via a secure correlation server creates presentation streams that have the same programming but include targeted advertisements in place of the default advertisement [the

Examiner construes the action of the secure correlation server as the expiring of the default advertisement in favor of the selected targeted advertisement]); and

electronically adding identifiers for one or more local advertisements to the playlist based on the determined zone (paragraph [0087] and figure 5 via Secure Correlation Server (SCS 540) may create subgroups based on input from the SPS 550 and then match ads to those groups, or may receive ads having specific criteria and form groups based on the specific desires of the advertisers); and

delivering the playlist to a video server (paragraph [0086] and figure 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ad; the presentation streams 545 are delivered to the network operator 560; the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 46: Eldering and Cowan disclose all the elements of Claim 45, and Eldering further discloses the invention comprising the video server transmitting data identified in the playlist to a client for decoding and display (paragraph [0086] and figure 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ads; the presentation streams 545 are delivered to the network operator 56, and the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 47: Eldering and Cowan disclose all the elements of Claim 45, and Eldering further discloses comprising: calculating the zone in which a client resides; and selecting the proper local advertising for the zone in which the client resides (paragraph [0164] and figure 35 via nodes are clustered together based on a correlation and each cluster of nodes receives a different presentation stream, and each cluster would have a cluster profile computed and could receive targeted ads based on the cluster profile).

Claim 48: Eldering and Cowan disclose all the elements of Claim 45, and Eldering further discloses the invention comprising:

receiving a copy of a given program for each zone that the video distribution system services (paragraph [0166] and figure 36 via clustering nodes can be used to create targeted channel lineups (TCL) that may include in addition to different presentation streams, different data/voice signals and different video on demand (VOD) signals are transmitted to the appropriate cluster of nodes, and each cluster of nodes receives its properly allocated TCL);

segmenting the received program into program content, national advertising and local advertising (paragraph [0166] and figure 36 via an AIS 3600 creates three separate data signals, and a VOD server creates three separate VOD signals); and

discarding all but one copy of zoned programming with program content and national advertising (paragraph [0166] and figure 36 via nodes N1, N3, N6 and N7 receive TCL-A, nodes N2 and N5 receive TCL-B, and nodes N4 and N8 receive TCL-C).

Claim 49: Eldering discloses a computerized method for delivering local advertising to a client in a video distribution system, the method comprising:

electronically receiving a copy of a given program for each zone that the video distribution system services (paragraph [0166] and figure 36 via clustering nodes can be used to create targeted channel lineups (TCL) that may include in addition to different presentation streams, different data/voice signals and different video on demand (VOD) signals are transmitted to the appropriate cluster of nodes, and each cluster of nodes receives its properly allocated TCL);

segmenting the program into program content, national advertising and local advertising; retaining the program content and discarding the national and local advertising (paragraph [0085] and figure 5 via the national advertiser 520 delivers national ads 522 to the content provider 510 to generate and deliver program streams; the program stream is delivered to the SCS 540, which also receives additional national ads 524 and local ads 520; the SCS 540 also receives subscriber profiles 555 from the SPS 550; the SCS 540 determines which ads, both additional national ads 524 and local ads 526 and 535 should be substituted for the default ad within the program stream 515);

but Eldering only discloses in part receiving a request for the program from a client in a given geographical zone;

Cowan teaches in col. 5, lines 39-55 and Fig. 1 a general block diagram showing a targeted television system in accordance with the present invention for delivering cable television signals to a viewer community represented by irregular area 101. Each zone, however, includes a number of geographically proximate subscribers and is referred to herein as being

substantially contiguous. Further, it is possible that over time the zone boundaries will change as new subscribers request cable service and other subscribers give up their prior service.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the delivery and segmentation of programming of Eldering to include the geographical zones and requests of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served (col. 2, lines 12-16).

but Eldering does not disclose associating one or more local advertisements with the request for the program wherein the one or more local advertisements include a zone identifier proximate to the given geographical zone;

Cowan teaches in col. 4, lines 15-49 use of the consumer community at large as subjects of consumer analysis when normal and substitute programs are presented on the television receiver of a community. Normal and substitute signals are distributed to separate zones of the community. Particular stores are selected to represent a particular community, stores selected to be representative of the community. The stores selected are those in which the shoppers are preponderantly from the same zone. Such a selection may be made based, for example, on the demographic data provided by a sample of the consumers themselves and/or it may be made based on a fixed perimeter drawn around the stores. Once the stores, and their included consumer information collection systems are identified, data associating particular stores with particular zones is then recorded in the market research computer. When a test is performed in which substitute advertising is transmitted to particular zones, the consumer purchase data from the selected stores of the market study area is collected. The significance of the substitute advertising

can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the delivery and segmentation of programming of Eldering to include the associating of advertising with particular zones of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served (col. 2, lines 12-16).

Eldering further discloses determining whether the geographically zoned local advertisement has expired and replacing an expired geographically zoned local advertisement with a replacement advertisement (paragraph [0122] and figures 18-20 via based on the type of programs viewed, times watched, channel change patterns, volume levels or other subscriber activities the heuristic rules could define the probability of a subscriber eating fast food, the type of ads they are receptive to (i.e., emotional, funny, abrasive), or the probability of the subscriber paying for a particular service (i.e., car or house cleaning, oil change) as opposed to doing it themselves [the Examiner construes the term "times watched" to include time of day/night intervals as well as how frequently a particular program is watched in order to determine when to place a particular advertisement]; and paragraph [0184] via in addition to the ads it is likely that an ad queue defining some characteristics of when ads should displayed is also sent to the PVR and stored thereon; based on the ad queues the ads would be substituted during avail [the Examiner construes the recitation of "... an ad queue defining sum characteristics of when ads should be displayed ..." as a determination of when to place a particular ad]; paragraph [0086]

and figure 5 via a secure correlation server creates presentation streams that have the same programming but include targeted advertisements in place of the default advertisement [the Examiner construes the action of the secure correlation server as the expiring of the default advertisement in favor of the selected targeted advertisement]); and

electronically creating a playlist identifying the programming content (paragraph [0166]) and figure 36 via clustering nodes in order to create targeted channel lineups (TCL), and the appropriate sets of signals are then combined together (i.e., ESPN-A, DATA-A and VOD-A) to form TCLs);

calculating, by using a programmable microprocessor, the a program advertising zone in which the requesting client resides (paragraph [0164] and figure 35 via nodes are clustered together based on a correlation and each cluster of nodes receives a different presentation stream, and each cluster would have a cluster profile computed and could receive targeted ads based on the cluster profile);

adding identifiers for advertising to the playlist based on the zone in which the client resides (*abstract* via correlating ad profiles to subscriber/subscriber group profiles and selecting targeted advertisements for the subscribers/subscriber groups based on the correlation); and

delivering the playlist to a video server (paragraph [0086] and figure 5 via the SCS 540 creates presentation streams 545 that have the same programming but targeted ads in place of the default ad; the presentation streams 545 are delivered to the network operator 560; the network operator 560 delivers the presentation streams 545 to the subscribers 580 via the access network 570).

Claim 50: Eldering discloses a computerized method for delivering local advertising to a client in a video distribution system, the method comprising:

receiving a playlist identifying programming and advertising information (paragraph [0092] and figure 7 via in generating one or more viewing characteristic vectors, the VCPS 700 receives input from the subscriber 710 in the form of commands from a subscriber interface device, such as a remote control);

transmitting video data identified in the playlist to a client operative to decode and display the video data (paragraph [0073] and figure 1 via the network operator 140 transmits the program stream (with approximately 20% of the national ads 125 replaced with local ads 128, 135) 145 to the subscribers 160 via the access network 150; the access network 150 may be a cable TV (CTV) network, a Switched Digital Video (SDV) network or other networks now known or later discovered and may have a hybrid fiber-coax (BFC) architecture, a satellite-based architecture, an Internet-based architecture, digital subscriber line (xDSL) architecture, fiber to the curb (FTTC) or fiber to the home (FTTH), or other architectures now known or later discovered);

electronically receiving a control command from the client (paragraph [0092] and figure 7 via the VCPS 700 receives input from the subscriber 710 in the form of commands from a subscriber interface device, such as a remote control);

but Eldering does not disclose associating one or more local advertisements with the control command from the client wherein the one or more local advertisements include a zone identifier proximate to where the client is located;

Cowan teaches in col. 4, lines 15-49 use of the consumer community at large as subjects of consumer analysis when normal and substitute programs are presented on the television receiver of a community. Normal and substitute signals are distributed to separate zones of the community. Particular stores are selected to represent a particular community, stores selected to be representative of the community. The stores selected are those in which the shoppers are preponderantly from the same zone. Such a selection may be made based, for example, on the demographic data provided by a sample of the consumers themselves and/or it may be made based on a fixed perimeter drawn around the stores. Once the stores, and their included consumer information collection systems are identified, data associating particular stores with particular zones is then recorded in the market research computer. When a test is performed in which substitute advertising is transmitted to particular zones, the consumer purchase data from the selected stores of the market study area is collected. The significance of the substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the delivery and segmentation of programming of Elderling to include the associating of advertising with particular zones of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served (col. 2, lines 12-16).

Elderling further discloses determining whether the geographically zoned local advertisement has expired and replacing an expired geographically zoned local advertisement

with a replacement advertisement (paragraph [0122] and figures 18-20 via based on the type of programs viewed, times watched, channel change patterns, volume levels or other subscriber activities the heuristic rules could define the probability of a subscriber eating fast food, the type of ads they are receptive to (i.e., emotional, funny, abrasive), or the probability of the subscriber paying for a particular service (i.e., car or house cleaning, oil change) as opposed to doing it themselves [the Examiner construes the term "times watched" to include time of day/night intervals as well as how frequently a particular program is watched in order to determine when to place a particular advertisement]; and paragraph [0184] via in addition to the ads it is likely that an ad queue defining some characteristics of when ads should displayed is also sent to the PVR and stored thereon; based on the ad queues the ads would be substituted during avails [the Examiner construes the recitation of "... an ad queue defining sum characteristics of when ads should be displayed ..." as a determination of when to place a particular ad]; paragraph [0086] and figure 5 via a secure correlation server creates presentation streams that have the same programming but include targeted advertisements in place of the default advertisement [the Examiner construes the action of the secure correlation server as the expiring of the default advertisement in favor of the selected targeted advertisement]); and

modifying, by using a programmable microprocessor, the playlist in accordance with the control command, wherein the advertising information identified in the playlist is updated (paragraph [0030] via targeted ads can be inserted into program streams using an Ad Insertion System (AIS); the AIS creates at least one presentation stream that is a program stream with an inserted targeted advertisement; a single presentation stream may be sent to the appropriate

subscribers or multiple presentation streams may be sent and the appropriate presentation stream is selected by the node, the branch or the subscriber via a STB or PVR); and

electronically transmitting video data identified in the modified playlist to the client (paragraph [0073] and figure 1 via the network operator 140 transmits the program stream (with approximately 20% of the national ads 125 replaced with local ads 128, 135) 145 to the subscribers 160 via the access network 150; the access network 150 may be a cable TV (CTV) network, a Switched Digital Video (SDV) network or other networks now known or later discovered and may have a hybrid fiber-coax (BFC) architecture, a satellite-based architecture, an Internet-based architecture, digital subscriber line (xDSL) architecture, fiber to the curb (FTTC) or fiber to the home (FTTH), or other architectures now known or later discovered).

Claims 52 and 53: Eldering and Cowan disclose all the elements of Claim 50, and Eldering further discloses the invention further comprising updating local and national advertising information (paragraph [0085] and figure 5 via the Secure Correlation Server (SCS) determines which ads (additional national ads 524, local ads 526, 535) should be substituted (targeted) for the ad (default ad) within the program stream 515 and which subscribers 580 should receive which ads).

16. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hooks et al. (US 6169542 B1) in view of Eldering et al. (US PgPub 20020123928 A1), Nathaniel (US 20030130887 A1) and Zizzamia et al. (US 20020161609 A1).

Claim 16: Hooks and Eldering disclose all the elements of Claim 15, but do not disclose wherein the external targeting system is selected from the group comprising a PRIZM system and an AXCIOM system.

Nathaniel teaches in paragraph [0023] lines 33-34 that network data on impressions and click-throughs can be estimated based on zip code based data from Claritas PRIZM codes.

Therefore, from the teaching of Nathaniel it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks in combination with the system of targeting ads to subscribers based on privacy-protected subscriber profiles of Eldering to include the non-deterministic method and system for the optimization of a targeted content delivery of Nathaniel in order to schedule delivery of targeted content to network devices in an optimal manner that is flexible and can be fine-tuned on the fly (paragraph [0006] lines 1-4).

Zizzamia teaches in paragraph [0037] lines 1-3 that external data sources also include business owner household level demographics from data providers such as AXCIOM or INFO-USA.

Therefore, from the teaching of Zizzamia it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks in combination with the system of targeting ads to subscribers based on privacy-protected subscriber profiles of Eldering and the non-deterministic method and system for the optimization of a targeted content delivery of Nathaniel to include the quantitative system and method that employs data sources external to

an insurance company to generate a statistical model of Zizzamia in order to use external data sources to provide higher demographic accuracy (paragraph [0011] lines 2-5).

17. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Liga et al. (US PgPub 20030154128 A1).

Claim 32: Eldering disclose all the elements of Claim 31, but does not disclose wherein identifying is conducted according to one or more of a set consisting of SCTE 35 cue packets, DTMF cues, contact closures triggered by an analog signal, network messages from an insertion system and network messages from a stat-mux/splicer.

Liga teaches in paragraph [0023] lines 10-13 that embedded data may be transmitted as separate data packets in the data stream comprising the video signal, or in network signals such as Society of Cable Telecommunications Engineers (SCTE) standards, such as the DVS 253 standard for cueing advertisements. Liga et al. also teaches in paragraph [0082] lines 1-7 detecting advertisements either by receiving the embedded data, or receiving a signal indicating the cessation of the program and beginning of an advertisement, where this signal may be, for example, a dual-tone frequency modulated (DTMF) signal, a DVS 253 or 380 signal, or any form of embedded command data of an analog or digital nature. Liga et al. also teaches in figure 3 and in paragraph [0042] lines 9-11 that once modulated, the digital signals are combined with standard network channel broadcasts by the multiplexor 340

Therefore, from the teaching of Liga it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of segmenting local

advertising by identifying indicators of Eldering to include the method and system for displaying updated, targeted, and/or alternately formatted advertisements to a consumer of Liga in order to use targeted ads in conjunction with consumer profile information to reach interested consumers (abstract lines 3-4).

18. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Cowan et al. (US Pat 6941573 B1).

Claim 33: Eldering discloses all the elements of Claim 24, but does not disclose the invention comprising:

determining if a given correctly zoned local advertisement has expired; and if the correctly zoned local advertisement has expired, generating a playlist utilizing a replacement local advertisement and the requested program.

Cowan teaches in col. 4 lines 35-40 that substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method for delivering local advertising to a client in a video distribution system of Eldering to include the television distribution system for signal substitution of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being

served and which avoids the problems, costs and user resistance of an individually addressed arrangement (col. 2 lines 12-16).

19. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Hooks et al. (US 6169542 B1) and Cowan et al. (US Pat 6941573 B1).

Claim 44: Eldering and Hooks disclose all the elements of Claim 43, but Eldering and Hooks only disclose in part the invention comprising: receiving a request for a program from the client; and selecting the properly zoned copy of the requested program.

Cowan teaches in col. 4 lines 35-40 that substitute advertising can then be determined by comparing consumer purchase data collected from selected stores associated with zones receiving the substitute advertising with consumer data collected from selected stores associated with zones receiving normal advertising.

Therefore, from the teaching of Cowan it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of delivering advertising through an interactive video distribution system of Hooks in combination with the targeting ads to subscribers of Eldering to include the television distribution system for signal substitution of Cowan in order to provide a market research signal substitution system which accurately represents the demographics of the community being served and which avoids the problems, costs and user resistance of an individually addressed arrangement (col. 2 lines 12-16).

20. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lumley et al. (US Pat 6588013 B1) in view of Hooks et al. (US Pat 6169542 B1) and Liga et al. (US PgPub 20030154128 A1).

Claim 41: Lumley disclose all the elements of Claim 40, but do not disclose wherein the indicators are selected from a set consisting of SCTE 35 cue packets, DTMF cues, contact closures triggered by an analog signal, network messages from an insertion system and network messages from a stat-mux/splicer.

Liga teaches in paragraph [0023] lines 10-13 that embedded data may be transmitted as separate data packets in the data stream comprising the video signal, or in network signals such as Society of Cable Telecommunications Engineers (SCTE) standards, such as the DVS 253 standard for cueing advertisements. Liga et al. also teaches in paragraph [0082] lines 1-7 detecting advertisements either by receiving the embedded data, or receiving a signal indicating the cessation of the program and beginning of an advertisement, where this signal may be, for example, a dual-tone frequency modulated (DTMF) signal, a DVS 253 or 380 signal, or any form of embedded command data of an analog or digital nature. Liga et al. also teaches in figure 3 and in paragraph [0042] lines 9-11 that once modulated, the digital signals are combined with standard network channel broadcasts by the multiplexor 340.

Therefore, from the teaching of Liga it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the local advertising segmentation of Lumley to include the method and system for displaying updated, targeted, and/or alternately

formatted advertisements to a consumer of Liga in order to use targeted ads in conjunction with consumer profile information to reach interested consumers (abstract lines 3-4).

21. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering et al. (US PgPub 20020123928 A1) in view of Hooks et al. (US Pat 6169542 B1).

Claim 43: Eldering discloses a computerized method for delivering local advertising to a client in a video distribution system, the method comprising:

electronically receiving multiple zoned copies of a given program, each zoned copy containing proper local advertising for a given zone (paragraph [0158] and Fig. 30 via groups may be formed based on the layout of a cable TV plant; a zone or super head-end 3000 receives national programming via satellite or other means from content providers ad distributes national programming to a plurality of head-ends 3010; each HE 3010 serves a number of nodes 3020; each node 3020 servers a plurality of subscribers 3030 via a plurality of branches 3040 from each node 3020);

recording a properly zoned copy of a given program for each zone the video distribution system services (paragraph [0025] via monitoring subscriber interaction with the television and aggregating the data to form the viewing characteristics, where the subscriber interaction includes at least some subset of channel changes, volume changes, EPG activation and **record** commands);

electronically determining, by using a programmable microprocessor, the zone in which the client requesting a program is located; and transmitting a properly zoned copy of the

requested program to the client. (paragraphs [0169]-[0171] and figures 37B, 38A-C and 39 via a node receiving multiple presentation streams at different frequencies, where the presentation streams can be transmitted using several methods and then mapped to the appropriate branch within the node; and at the frequency remapping module 3370, different digital signals are remapped such that multiple versions of the digital channels containing alternate programming or advertising sequences are re-mapped for transmission to the individual branch zones; and different digital presentation streams being transmitted at different wavelengths).

*Response to Arguments*

22. Applicant's arguments filed September 04, 2009 have been fully considered but they are not persuasive.
23. The Applicants argue regarding now cancelled claim 21, which is now incorporated into claim 1 that "... Hooks makes no mention of how the system would be operable to determine if an advertisement expired nor does Hooks make any suggestion of one or more replacement advertisements wherein the one or more selected advertisements have expired. Instead, Hooks focuses on menu database of a head end facility which includes menus associated with interactive video subscriber units. The head end facility of the Hooks system maintains and updates each of the menus where entries to the menu database are added and removed in response to requests from any of various interactive video subscriber units ... Hooks does not even discuss the expiration of these menu entries, let alone teach or suggest the replacement of advertisements for expired advertisements as claimed by Applicants." The Examiner respectfully disagrees. Hooks teaches in col. 14, lines 28-45 that since the advertisement menus are

maintained in the head end facility, the subscriber is able to save and retrieve the supplemental advertising information for an extended period of time. The Examiner construes this "extended period of time" to be finite, and therefore has a time limit or expiration. Hooks also teaches in col. 9, lines 39-52 and Fig. 6 that menu database 79 includes menus 92 associated with interactive video subscriber units 22 (FIG. 1). Each of menus 92 is maintained and updated by head end facility 54 (FIG. 1). In other words, entries to menu database 79 are added and removed in response to requests from any of interactive video subscriber units 22 (FIG. 1). Thus, each of menus 92 is customized for the specific subscriber in response to the subscriber's registration requests. The Examiner construes the actions of adding and removing as replacement, and therefore considers the description of Hooks *supra* as sufficient to establish advertisement replacement. Arguments regarding Hooks and advertisement expiration are moot in view of new grounds of rejection.

24. The Applicants then argue regarding claim 22, now also cancelled and incorporated into claim 1 that "Like Hooks, Eldering fails to teach or suggest one or [more] replacement ads wherein the one or more selected ads are expired. Eldering substitutes a set of local and national advertisements with another set of local and national advertisements that 'correlate' more effectively with the a subscriber profile. As such, Eldering fails to teach or suggest Applicants replacement ads as claimed." The Examiner respectfully disagrees. Eldering teaches in paragraph [0122] and Figures 18-20 that based on the type of programs viewed, times watched, channel change patterns, volume levels or other subscriber activities the heuristic rules could define the probability of a subscriber eating fast food, the type of ads they are receptive to (i.e., emotional, funny, abrasive), or the probability of the subscriber paying for a particular service (i.e., car or

house cleaning, oil change) as opposed to doing it themselves. The Examiner construes the term "times watched" to include time of day/night intervals as well as how frequently a particular program is watched in order to determine when to place a particular advertisement. Eldering also teaches in paragraph [0184] that in addition to the ads it is likely that an ad queue defining some characteristics of when ads should displayed is also sent to the PVR and stored thereon. Based on the ad queues the ads would be substituted during avails. The Examiner construes the recitation of "... an ad queue defining sum characteristics of when ads should be displayed ..." as a determination of when to place a particular ad. Eldering further teaches in paragraph [0086] and figure 5, a secure correlation server creates presentation streams that have the same programming but include targeted advertisements in place of the default advertisement. The Examiner construes the action of the secure correlation server as the expiring of the default advertisement in favor of the selected targeted advertisement.

25. The Applicants then argue regarding claim 24 that "Eldering fails to disclose determining whether the geographically zoned local advertisement has expired and replacing an expired geographically zoned local advertisement with a replacement advertisement. Indeed, Eldering fails to disclose a system or method that even suggests advertisements that may expire and replacing the expired advertisements with one or more replacement advertisements." The Examiner respectfully disagrees. The Examiner has already presented support in Eldering for expiring ads as *supra*. Regarding "geographically zoned local advertisements", Eldering teaches in paragraph [0156] the querying of a database to obtain information about a target group using the correlation of an ad characteristic with a particular group identified by zip code, area code, town, cable node. Group IDs may be utilized to determine applicability of an ad to a particular

group, with the basis for the grouping being geographic, demographic, socioeconomic, or through another grouping mechanism.

26. The Applicants also argue regarding now cancelled claim 42, moved to claim 34 that "... none of the promotional material attributes or detectable environment situation parameters discussed by Lumley include any mention of the expiration of local advertisements. The AMS, as claimed by Applicants is operative to request one or more replacement advertisements for the one or more geographically zoned advertisements wherein the one or more selected advertisements have expired." The Examiner respectfully disagrees. The argument is moot in view of new grounds of rejection. (Hooks and Eldering).

### *Conclusion*

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are:

- a. Yu (US PgPub 20040117819 A1) teaches an apparatus for producing TV advertising contents and inserting interstitial advertisements on TV programs.
- b. Dilger et al. (US PgPub 20030058707 A1) teaches a system and process for implementing commercial breaks in programming.
- c. Bjogan et al. (US PgPub 20030039465 A1) teaches a system for selectively associating cues with stored video frames and methods of operating the same.
- d. Barnhouse et al. (US Pat 6418461 B1) teaches intelligent call switching node in an intelligent distributed network architecture.
- e. Dugan et al. (US Pat 6363411 B1) teaches an intelligent network.

- f. Hendricks et al. (US Pat 6201536 B1) teaches a network manager for cable television system headends.
- g. ANSI/SCTE 35 2007; Digital Program Insertion Cuing Message for Cable; American National Standard; Engineering Committee; Digital Video Subcommittee; Society of Telecommunications Engineers.
- h. ITU-T Telecommunication Standardization Sector of ITU; ITU Recommendation F.902; 02-1995; Operations and Quality of Service Human Factors; International Telecommunication Union.
- i. ITU-T Telecommunication Standardization Sector of ITU; ITU Recommendation Q.23; 02-1995; General Recommendations on Telephone Switching and Signalling; International Automatic and Semi-Automatic Working; Technical Features of Push-Button Telephone Sets.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM CHORNESKY whose telephone number is (571)270-5103. The examiner can normally be reached on Monday - Thursday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Weinhardt can be reached on 571-272-6633. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. C./  
Examiner, Art Unit 3688  
December 15, 2009

/ROBERT WEINHARDT/  
Supervisory Patent Examiner, Art Unit  
3688